



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | 03/31/11 | Bill No: | Assembly Bill 1050 |
| Tax Program: | Emergency Telephone Users Surcharge | Author: | Ma |
| Sponsor: | CTIA – The Wireless Association | Code Sections: | RTC 41127.9 |
| Related Bills: | | Effective Date: | 01/01/12 |

BILL SUMMARY

This bill would require the Board of Equalization (BOE) to convene a working group to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-user consumers.

ANALYSIS

CURRENT LAW

Surcharges and Taxes.¹ There are a number of state surcharges, taxes, and fees assessed on telecommunications services. These taxes and surcharges are collected by telephone service providers from their service customers, then remitted to either the California Public Utilities Commission (CPUC) or the BOE, as specified.

CPUC-Mandated Telecommunications All-End-User Surcharges

Currently, there are six CPUC-mandated telecommunications all-end-user surcharges that support various public programs in California. The all-end-user surcharge rates vary from program to program, and they are adjusted periodically based on the forecasted demand of the programs. The six programs supported by the all-end-user surcharges are listed below.

- Universal Lifeline Telephone Service or ULTS (1.150%): California Lifeline provides discounted basic telephone (landline) services to eligible California households.
- Deaf and Disabled Telecommunications Program or DDTP (0.200%): The CPUC implemented three telecommunications programs for California residents who are deaf, hearing impaired, or disabled. These three programs are known collectively as the DDTP.
- California High Cost Fund-A or CHCF-A: This fund provides a source of supplemental revenues to 14 small local exchange carriers (LEC's) for the purpose of minimizing any rate disparity between rural and metropolitan areas. As of December 1, 2010, the CHCF-A surcharge rate is 0.0000%.
- California High Cost Fund-B or CHCF-B (0.450%): This fund provides subsidies to carriers of last resort (COLRs) for providing basic local telephone service to residential customers in high-cost areas that are currently serviced by certain

¹ The following information is provided by the CPUC; for additional detail see [Surcharges and Taxes](#)

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carriers, as specified. The purpose is to keep basic telephone service affordable and to meet the CPUC's universal service goal.

- California Teleconnect Fund or CTF (0.079%): Another program established by the CPUC to meet its universal service goal, this fund provides a 50% discount on selected telecommunication services to qualifying schools, libraries, government-owned and operated hospitals and health clinics, and community based organizations.
- California Advanced Services Fund or CASF (0.00%): As of January 1, 2010, the CASF surcharge rate is 0.00%. This was a two-year program that ran from January 1, 2008, to January 1, 2010, that provided grants to "telephone corporations" to fund unserved and underserved areas with broadband services.

CPUC User Fee (Reimbursement Account)

The CPUC determines annually the appropriate fee to be paid by the telecommunications carriers. This fee is based on the telecommunications carrier's gross intrastate revenue excluding inter-carrier sales, equipment sales, and directory advertising. The purpose of this fee is to finance the CPUC's annual operating budget.

Telecommunications carriers with annual gross intrastate revenues in excess of \$750,000 are required to remit this fee on a quarterly basis by the 15th of April, July, October, and January. Telecommunications carriers with annual gross intrastate revenues of \$750,000 or less are required to remit the fee on an annual basis on or before January 15.

Emergency Telephone Users Surcharge Tax (911 Surcharge)

Under existing law, Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code (RTC), known as the Emergency Telephone Users (911) Surcharge Act, imposes a surcharge on amounts paid by every person in the state for intrastate telephone communication service in this state and Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time it collects its billing from the service user. The surcharge required to be collected must be added to and stated separately in a service supplier's billings to the service user.

The current surcharge rate is 0.50 percent of the amounts paid for intrastate telephone and VoIP services in this state. The surcharge is paid to the BOE and deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund. The funds in this account are used to pay for the costs of administration of the 911 emergency telephone number system.

Local Taxes, Fees and Surcharges

There are also locally imposed taxes, fees, and surcharges on communications services, such as 911 or access lines taxes, fees and surcharges and utility user taxes (UUT), which may be imposed by cities, counties, and municipalities on the consumption of utility services, including telephone service.

PROPOSED LAW

This bill would add Section 41127.9 to the RTC to require, upon appropriation, the BOE to convene a working group to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-user consumers.

The working group would include stakeholder representatives, including, but not limited to, the CPUC, the California Technology Agency (CTA), local government entities, law enforcement agencies, mobile telephony service providers, retailers, and consumer groups.

The bill would define “communications taxes, fees, and surcharges” to mean any and all state and local-authorized taxes, fees, and surcharges on communications, including, but not limited to, all of the following:

- The 911 Surcharge.
- Charges authorized by the CPUC, including:
 - CHCF-A surcharge
 - CHCF-B surcharge
 - DDTP surcharge
 - CTF surcharge
 - CASF surcharge
 - ULTS
 - CPUC reimbursement fees
- Local 911 or access line taxes, fees, or surcharges
- Local utility user taxes

The bill would become effective January 1, 2012.

IN GENERAL

Created in 1879 by a constitutional amendment, the BOE was initially responsible for ensuring that county property tax assessment practices were equal and uniform throughout California.

The BOE began to levy four new taxes, including insurance and corporate franchise taxes, in 1911 to produce revenue for services throughout the state. As a result of the Great Depression, the BOE assumed the collection of the newly created sales tax in 1933 and the use tax in 1935. Currently, the BOE administers the state's sales and use, fuel, alcohol, tobacco, and other taxes and collects fees that fund specific state programs in addition to its property taxes responsibilities.

BACKGROUND

In 2010, AB 2545 (De La Torre) would have required the CPUC to conduct a public process for the purpose of developing recommendations for an equitable and uniform method of collection for state and local government-imposed communications taxes, fees, and surcharges from prepaid communications end-user consumers. That bill was ordered to third reading in the Senate, but was subsequently moved to the Senate inactive file where the bill died.

COMMENTS

1. **Sponsor and Purpose.** The bill is sponsored by CTIA – The Wireless Association² and is intended to create a fair uniform mechanism to ensure collection of state and local communications taxes and fees from consumers of prepaid wireless communication services.
2. **The BOE is involved in one telephone communications tax program, the state’s 911 Surcharge, and has no involvement in the seven various CPUC-administered surcharges, the over 100 city and county UUTs, or other local EMS fees or taxes that involve telephone communications.** As summarized under the Current Law section, the BOE is responsible for the tax administration of the state 911 Surcharge; the CPUC and the CTA are involved in the identification and licensing of service suppliers and setting the 911 Surcharge rate. Except for the state 911 Surcharge, the BOE has no knowledge, expertise, or opinion regarding the various state and local surcharges, taxes, and fees imposed on telecommunication services. Therefore, it would not seem that the BOE is qualified to act as the convener.
3. **BOE staff is willing to be involved in the process as an interested party.** This measure would require the BOE, as the convener, to be a main participant in conducting a public process to develop and make a recommendation for an equitable and uniform method of collecting communications taxes, fees, and surcharges from end-user consumers of prepaid communication services. The BOE is committed to providing quality customer service. As part of that commitment, the BOE provides information and advice to the Legislature, industry groups, taxpayers, and other interested parties regarding tax and fee programs that the BOE currently administers.

The proposed BOE involvement and responsibilities are beyond the BOE’s scope and mission. Other than the 911 Surcharge, the BOE does not have a role or expertise in the tax collection or administration of the various state and locally authorized taxes, fees, and surcharges, and it would be unable to make policy decisions or take on the responsibility for taxes it has no expertise in.

Moreover, this bill could set a precedent for more of these types of “public process” recommendations to the Legislature, which could jeopardize the BOE’s core mission as a tax administration agency.

BOE staff is willing to be involved in the process as an interested party with regard to its duties under the state 911 Surcharge Law, but not as a principal convener of a “public process” making recommendations on issues that are outside its area of expertise.

Alternatively, the author may want to consider placing the responsibility for a legislative recommendation with the Legislative Analyst’s Office or an independent commission that can then rely on the interested parties to provide technical assistance and information.

² CTIA was originally the acronym for “Cellular Telecommunications and Internet Association.”

- 4. The service suppliers currently pay the 911 Surcharge for prepaid communication services.** The 911 Surcharge Act requires the BOE to enforce the provisions of that Act and authorizes the BOE to prescribe, adopt, and enforce rules and regulations relating to its administration and enforcement. In 2000, the BOE amended [Regulation 2401](#), *Definitions*, and adopted [Regulation 2403](#), *Prepaid Telephone Calling Cards*, to clarify the application of the 911 surcharge on dollar amounts or value of minutes deducted upon use from prepaid telephone cards. These regulations were adopted to address confusion regarding the application of tax to prepaid telephone calling cards within the telecommunications industry.

Although there are different forms of prepaid communication services, in general, the service suppliers have been reporting the 911 Surcharge consistent with existing statutes and regulations.

- 5. Technical amendment.** This bill proposes to add Section 41127.9 to the RTC. It is suggested that either the bill language be uncoded or that it be moved to an appropriate place in the Public Utilities Code or the Government Code since the 911 Surcharge Act, where it is currently placed, pertains solely to the collection and administration of the 911 Surcharge.

COST ESTIMATE

The BOE would incur costs to convene and conduct a public process to develop recommendations for an equitable and uniform method of collecting communications taxes, fees, and surcharges from end-user consumers of prepaid communications services. A cost estimate is pending; however, a preliminary cost estimate prepared for last year's AB 2545, as proposed to be amended to require the BOE to convene a working group similar to the provisions in this bill, estimated the costs to be \$300,000. Upon appropriation, the bill would require the BOE to convene a working group, as specified.

The BOE would incur insignificant and absorbable costs if the bill is amended to allow the BOE to act as an interested party in the public process to develop recommendations for an equitable and uniform method of collecting communications taxes, fees, and surcharges from end-user consumers of prepaid communications services.

REVENUE ESTIMATE

This bill would not affect the revenues collected for the state by the BOE.

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